

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

AXO STAFF LEASING, LLC,
Plaintiff

v.

**ZURICH AMERICAN INSURANCE
COMPANY, MCCREADIE &
MCCREADIE, INC., LASSITER WARE
INSURANCE,**

Defendants

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Case No. A-19-CV-00002-LY

**REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

**TO: THE HONORABLE LEE YEAKEL
UNITED STATES DISTRICT JUDGE**

Before this Court are Defendant Lassiter Ware Insurance's ("Lassiter") Motion for Summary Judgment, filed on August 19, 2019 (Dkt. No. 19), and Plaintiff AXO Staff Leasing, LLC's ("AXO") Motion for Summary Judgment, filed on August 20, 2019 (Dkt. No. 21). On August 30, 2019, the District Court referred the above motions to the undersigned Magistrate Judge for Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1), Federal Rule of Civil Procedure 72, and Rule 1 of Appendix C of the Local Rules of the United States District Court for the Western District of Texas ("Local Rules").

I. ANALYSIS

On August 30, 2019, the Court granted Zurich American Insurance Company's ("Zurich") Motion to Stay its Response to AXO's Motion for Summary Judgment Summary Judgment until the Court ruled on Zurich's Opposed Motion to Compel Examination under Oath and to Abate Lawsuit. Dkt. No. 27. On September 6, 2019, the Court similarly granted AXO's response deadline to Lassiter's Motion for Summary Judgment until the Court ruled on the Motion to Compel/Abate.

Dkt. No. 30. On September 16, 2019, this Court granted Zurich's Motion to Compel/Abate and ordered this lawsuit abated until 30 days after AXO submitted to an examination under oath and produced certain documents requested.

In light of the Order abating this case and the effect that it will have on the issues raised in AXO's Motion for Summary Judgment, the Court recommends that the District Court strike AXO's Motion for Summary Judgment (Dkt. No. 21) without prejudice to refiling after the Order abating this case is lifted. However, the Court finds that the Motion to Compel/Abate has no effect on the issues raised in Defendant Lassiter's Motion for Summary Judgment (Dkt. No. 19). Accordingly, the Court **HEREBY LIFTS** the **STAY** on AXO's response deadline to Lassiter's Motion for Summary Judgment. AXO will have until September 30, 2019 to file its Response, and Lassiter will have until October 7, 2019 to file a Reply.

II. ORDER AND RECOMMENDATION

Based on the foregoing, the undersigned **RECOMMENDS** that the District Court **STRIKE** AXO's Motion for Summary Judgment (Dkt. No. 21) without prejudice to refiling after the stay has been lifted in this case.

The Court **FURTHER ORDERS** that the stay on AXO's response deadline to Lassiter's Motion for Summary Judgment (Dkt. No. 19) is **HEREBY LIFTED**. AXO will have until September 30, 2019 to file its Response, and Lassiter will have until October 7, 2019 to file a Reply. No Sur-replies will be permitted.

III. WARNINGS

The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The District Court need not consider frivolous, conclusive, or general objections. *See Battle v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987). A party's failure to file written

objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served with a copy of the Report shall bar that party from de novo review by the District Court of the proposed findings and recommendations in the Report and, except upon grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the District Court. *See* 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

SIGNED on September 16, 2019.



SUSAN HIGHTOWER
UNITED STATES MAGISTRATE JUDGE